

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

CHESAPEAKE ENERGY CORPORATION §

An Oklahoma corporation, §

Plaintiff, §

v. §

Case No. 5:07-cv-00318-C

TXD SERVICES LP, a Texas limited §

Partnership, §

Defendant. §

**CHESAPEAKE ENERGY CORPORATION'S SUPPLEMENTAL
REQUESTED JURY INSTRUCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Chesapeake Energy Corporation ("Chesapeake") respectfully requests that the court submits the attached jury instruction.

Respectfully submitted,

s/Jesse R. Pierce

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on January 31, 2008, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

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s/Jesse R. Pierce

**CHESAPEAKE'S SUPPLEMENTAL
REQUESTED JURY INSTRUCTION**

Chesapeake respectfully requests the Court to submit the following jury instruction in connection with TXD's damages question:

You are instructed that a party who claims damages resulting from a breach of contract has a duty under the law to use reasonable diligence to avoid or minimize those damages.

TXD may not recover for any item of damage that it could have avoided through reasonable effort. If you find by a preponderance of the evidence TXD unreasonably failed to take advantage of an opportunity to lessen its damages, you should deny it recovery for those damages which it would have avoided had it taken advantage of the opportunity.

You are the sole judge of whether TXD acted reasonably in avoiding or minimizing its damages. An injured party may not sit idly by when presented with an opportunity to reduce its damages. However, it is not required to exercise unreasonable efforts or incur unreasonable expenses in mitigating the damages. Chesapeake has the burden of proving the damages that TXD could have mitigated.¹

_____ ACCEPTED

_____ REFUSED

_____ MODIFIED AS FOLLOWS: _____

¹ See Hon. Leonard B. Sand, et al., 4 Modern Federal Jury Instructions, Instr. 77-7 (2006); O'Malley, Kevin F., Jay E. Grenig & Hon. William C. Lee, Federal Jury Practice and Instructions: Civil §128.50 (6th Ed. 2000); *Bill C. Harris Construction Co., Inc. v. Powers*, 554 S.W.2d 332, 336 (Ark. 1977); *Gibson v. Lee Wilson & Co.*, 200 S.W. 2d 497, 502 (Ark. 1947).